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02-278

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

SEP 15 2003

Control No. 0302594/aw

The Honorable Jo Ann Davis
U.S. House of Representatives
1123 Longworth House Office Building
Washington, D.C. 20515

RECEIVED

SEP 29 2003

Dear Congresswoman Davis:

Federal Communications Commission
Office of the Secretary

Thank you for your letter on behalf of your constituent, Mr. Robert Hershberger, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Mr. Hershberger expresses concern that "without the full input from the business community" the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Mr. Hershberger indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. Hershberger's comments. We have placed a copy of Mr. Hershberger's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,


K. Dane Snowden

Chief
Consumer & Governmental Affairs Bureau

Enclosures

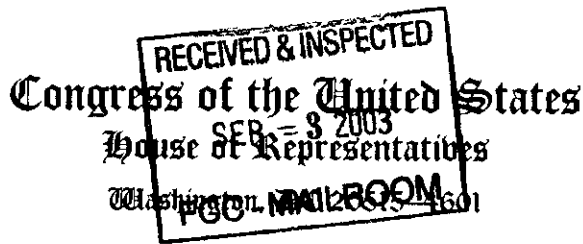
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August 15, 2003

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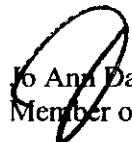
Dear Chairman Powell:

I would like to bring your attention to the attached correspondence my constituent, Mr. Robert Hershberger of Williamsburg, Virginia. Mr. Hershberger is concerned that the FCC's revision of the Telephone Consumer Protection Act with respect to fax solicitations will have a detrimental effect on numerous businesses, small businesses. Please consider Mr. Hershberger's concerns during this public comment period.

I appreciate your consideration of this matter and I ask that you forward your response to my office. Please do not hesitate to contact me or my office with questions or information regarding this matter or any other.

With kind regards, I remain

Sincerely,


Jo Ann Davis
Member of Congress

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The Honorable Michael Powell
Federal Communications Commission
443 12th St , SW
Washington, DC 20554

Dear Commissioner Powell:

RE: Docket # 02-278

I am writing to strongly urge you to stay temporarily and then reconsider the rules governing unsolicited facsimile advertisements included in the Report and Order amending the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA).

The Commission has decided, without the full input from the business community, to modify the current law by doing away with the "established business relationship" provision pertaining to fax advertisements.

This rule will restrict a basic means of contact with our members as weI would not be allowed to fax membership dues renewal notices, promotions for upcoming meetings and seminars, or solicitations to sponsor a chamber activity or event. Attorneys have read the rule to say that even if these sorts of materials are requested over the phone or via e-mail, unless weI first obtain written permission, weI would be in violation of the rule. If this is true, it forces our members either to send written permission to continue to receive membership-related information, or forfeit their right to hear about the benefits, events, and services we can offer their business.

We believe that the FCC did not fully understand the breadth, scope and practical effect of this decision. These regulations will add to the economic burden of running a small business by increasing paperwork requirements and encouraging frivolous lawsuits against unsuspecting small business owners. There are already many organizations advertising their litigation services and ready to pounce on small businesses that allegedly send out unsolicited faxes.

This proposal is a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits. I urge you to reconsider the proposal and ask that you temporarily stay the rules until chambers of commerce, trade associations, and businesses are able to provide additional comments.

Sincerely,

Robert Hershberger
421 N. Boundary Street P.O. Box 3620
Williamsburg, VA 23185-3614

cc:
Senator Warner
Senator Allen
Representative Davis